



# Department of Planning and Zoning



## The Zoning Board

### **What is the Zoning Board?**

The five elected County Council members also comprise the Zoning Board (ZB). The ZB makes decisions regarding requests for changing the zoning of a particular piece of property (known as piecemeal zoning). The ZB also approves preliminary development plans, required in several of the County's zoning districts as the first step for developing property. The ZB complies with the Howard County Code, County Zoning Regulations and Subdivision Regulations, and its own Rules of Procedure. Case law in relevant written decisions of Maryland courts also guides the Board.

### **What are piecemeal zoning petitions?**

In accordance with state law, the ZB judges most petitions for zoning map amendments by the "change or mistake rule." This requires the ZB to find that a substantial change in the character of the neighborhood has occurred since the last Comprehensive Zoning or that a mistake was made during the last Comprehensive Zoning in zoning the subject property. If the ZB finds a change or mistake and it finds that the proposed zoning designation for the property would be more appropriate, it may approve the requested rezoning. The Board is not compelled, however, to approve the rezoning unless it finds that the existing zoning provides for no reasonable use of the property.

Certain zoning districts, called floating districts, are not mapped during Comprehensive Zoning, but may only be placed on a property through a petition initiated by a property owner. The "change or mistake rule" does not apply to floating districts; instead, the Zoning Regulations list criteria, which must be met in order to approve a petition.

### **What is the Comprehensive Zoning Plan?**

The Howard County Charter and Code empowers the County Council to adopt maps dividing the County into zoning districts and regulations governing the use of land within these districts. Together, the zoning maps and regulations are known as the County's Comprehensive Zoning Plan. The County Council approves a new Comprehensive Zoning Plan approximately every eight to ten years, following an update of the County General Plan. The change or mistake rule does not apply during Comprehensive Zoning.

## What is a Documented Site Plan?

Applications for piecemeal map amendments may employ the documented site plan option allowed by Section 100.G.2 of the Zoning Regulations. This option allows a petitioner to submit a specific site design and uses for the property as part of the rezoning petition. If the Zoning Board makes the necessary findings to approve the rezoning, it may also approve the proposed site plan, which the developer is then obligated to follow. Any future substantive changes to this plan must be presented to the Zoning Board for its approval.

If this option is not used, then a rezoned property may be developed for any use permitted by the Zoning Regulations for the new zoning district. Petitioners will sometimes mention a certain scheme for developing a property as part of their testimony at the Zoning Board hearing. Unless site plan documentation is included with the petition as provided by Section 100.G.2, such testimony has no impact on the future use of the property.

## What is the piecemeal amendment process?

The property owner, the Department of Planning and Zoning (DPZ), or a Zoning Board member may submit a petition. Petitions are submitted to DPZ, where staff members review it for completeness and distribute it to County and State agencies for comments. DPZ schedules the case to be heard by the Planning Board, and prepares a Technical Staff Report, which incorporates agency comments and includes an evaluation and recommendation on the proposal.

The Planning Board conducts a public meeting, accepts comments from any interested party and submits a written recommendation to the Zoning Board. In some cases the petitioner may choose to amend the petition, based on the feedback from the Planning Board and the community, before proceeding to the Zoning Board. Substantive amendments would require a new Planning Board meeting. The Zoning Board hearing is scheduled after the Planning Board meeting is completed.

Public notice is provided of the Planning Board meeting and the Zoning Board hearing. The petitioner must:

- **Publish legal notice** advertising the Zoning Board hearing in two newspapers of general circulation in Howard County at least 30 days before the hearing.
- **Send a certified letter** to adjoining property owners notifying them of the Zoning Board hearing.
- **Post the property** with a sign giving the Zoning Board hearing date, time and place. The sign must remain posted 30 days before and 15 days after the public hearing. Petitioners are also requested to post a sign advertising the Planning Board meeting for 30 days prior to the meeting.

## How can I oppose or support a piecemeal zoning?

**Prepare before the ZB hearing.** Review the official file at DPZ's Public Service Desk and obtain copies of the petition, plat, Technical Staff Report and PB Recommendation. You may attend the PB meeting on the case to hear the petitioner's presentation or to comment. Contact

either DPZ or the ZB office to see what other relevant information is available (i.e., records from the last Comprehensive Zoning or pertinent sections of the Zoning Regulations).

**Testify at the ZB hearing.** A protestant can most effectively oppose or support a petition at the ZBs public hearing by presenting testimony and evidence directly related to the issue of change or mistake. (For a floating zone, testimony should address the criteria given in the Zoning Regulations for that district). If there is a document site plan, testimony may also deal with the proposed site plan and its impact. Testimony is given under oath and made a part of the official record of the hearing. The Board has authority to disallow testimony that is irrelevant or redundant.

Any person, who testifies at a hearing and has made contributions having cumulative value of \$500 or more since October 1, 1995 to a candidate for County Executive or County Council, or to a candidate's treasurer or political committee, must sign a Disclosure of Contribution form. Contact the ZB office for further information.

**Consider using a spokesperson to testify.** When a group appears in opposition to a petition, the Board encourages protestants to select a spokesperson to cross-examine witnesses, call witnesses, introduce evidence on behalf of the group and object to the introduction of evidence. The spokesperson may make opening and closing statements. A person not choosing to be represented by a spokesperson may represent himself, having the same rights as the spokesperson.

### **Is it necessary to hire an attorney when protesting a case?**

It is neither necessary nor required to hire an attorney; but you may wish to carefully consider this option depending on the complexity of the case. An attorney with knowledge of the intricacies of the zoning law may be able to point out omissions in the proposal or facts that would merit a denial or approval.

### **Can I submit written testimony?**

Under the ZB Rules of Procedure, evidence or testimony submitted outside of the public hearing will not be accepted or distributed to the Board members, as this is a quasi-judicial proceeding. However, you may read written testimony at the public hearing and then submit that testimony to the Board as part of the record. You may also submit exhibits at the public hearing (i.e., photographs, drawings), not permanently mounted and able to be folded to a maximum size of 9" by 14". Submit at least seven copies of any exhibit, for the file, the petitioner and each Board member. File a report or similar documentary evidence with the Clerk of the Board at least 30 days before the date of the ZB hearing.

### **Can I speak to ZB members?**

ZB Rules of Procedure *prohibit* any communication between a member of the Board and a party to the case regarding any matter relevant to the merits of the case outside of the public hearing. However, you may contact the ZB Office at 410-313-2395 or the Department of Planning and Zoning at 410-313-2350 for information about the case or to see the official case file.

### **How do I testify at the public hearing?**

Persons who wish to testify sign up on a sheet provided at the hearing. It is ZB policy that if a hearing is continued to a later date, *only individuals who have signed up to testify at the initial hearing are permitted to testify at any subsequent hearing on the same case*, unless called on petitioner's rebuttal.

### **What is the order of presentation?**

**Opening Statements:** After the ZB chairperson calls the meeting to order, the Assistant County Solicitor (the Board's legal advisor) introduces into the record all the reports and official documents pertaining to the case. At this time, all preliminary matters and other motions may be heard. Both the petitioner and protestant(s) may give opening statements designed to inform the Board of issues that must be decided.

- **The petitioner** presents his case using witnesses who offer testimony, exhibits and other relevant evidence. Witnesses testifying on behalf of the petitioner are questioned by the petitioner and then may be cross-examined by the Board members, protestants and the Board's legal advisor. Questions pertain only to statements made by the witness. Re-direct examination and re-cross-examination can be permitted at the discretion of the Board chairperson.
- **The protestants** present their case in the same format as the petitioner. After the protestant's presentation, the petitioner will have an opportunity to present evidence to rebut any evidence introduced by any protestant and then surrebuttal will be allowed by the protestants to contradict new evidence produced by the petitioner during rebuttal. During rebuttal, the parties may introduce evidence to rebut any previous testimony, however, new lines of testimony may not be presented.
- **Summation**, if desired, is presented first by the petitioner and then the protestants. The Board may impose a time limit or request that the summation be submitted in writing rather than given verbally.

### **What is cross-examination?**

If a protestant has an attorney or spokesperson, that individual would do the questioning. Other protestants could hand written questions to the attorney or spokesperson. If there is no attorney or spokesperson, an individual has the right to cross-examine the petitioner's witness. Cross-examination is limited to asking relevant question directly related to the witness's testimony. Statements, opinions and/or introduction of evidence are not allowed at this time.

### **Is all testimony is subject to cross-examination?**

**Yes.** The Board members, the Board's legal advisor, the petitioner or the petitioner's attorney can ask you questions once you have completed your testimony; however, they can only ask questions directly related to your testimony.

### **When will the Board make a decision on this case?**

The Board may deliberate on the case immediately after the hearing or set a deliberation date, which will be announced and posted. Deliberations by the Board are open to the public; however, the public cannot ask questions or participate. The Board's decision is not final until

the Decision and Order (the official written legal document explaining the Board's decision) is prepared by the Office of Law and signed by the Board members, which may take up to 90 days from the date of the verbal decision. A copy of the Decision and Order is mailed to the petitioner and the spokesperson(s) for the protestants.

### **What is the appeal procedure?**

After the Decision and Order is signed, a party who appears in the case has 15 days to request the Board to reconsider its decision and 30 days to appeal the decision to the Circuit Court. If appealed, the transcript of the proceedings (prepared by the Board's office and the fee paid by the requesting party), the official file and all evidence and exhibits will be forwarded to the court.

### **Additional resources**

The official case file, including the petition, Technical Staff Report, and Planning Board recommendations may be reviewed at the DPZ Public Service Desk. Copies are \$.25 per page.

Resources:

- The Howard County Zoning Regulations (available at DPZ for a fee or on the DPZ County Web Site [www.howardcountymd.gov](http://www.howardcountymd.gov))
- DPZ brochures - Amendments to the Zoning Maps and the Comprehensive Zoning Plan Brochure
- ZB Rules of Procedure

### **An Important note ...**

This guide is meant to provide a basic understanding of the piecemeal zoning map amendment process. It is not intended as a substitute for the Zoning regulations or legal advice.

For more information contact:

The Howard County Department of Planning and Zoning

(410) 313-2350, TTY 410-313-2323 or [www.howardcountymd.gov](http://www.howardcountymd.gov) or visit Planning & Zoning's Customer Service Center on the first floor of the George Howard Building, 3430 Courthouse Drive, Ellicott City, Maryland, 212043.

Office Hours are:

Monday through Friday

8:00 a.m. to 5:00 p.m.

Written inquiries may also be sent to our office at the above address.

Rev. 01/23/08